

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CIVIL TERM : PART 61

-----X
PACIFIC ALLIANCE

Plaintiff

- against -

Ind. No.
652077/17

KWOK HO WAN, a/k/a KWOK HO, a/k/a
GUO WENGUI, a/k/a GUO WEN-GUI, a/k/a
WAN GUE HAOYUN, a/k/a MILES KWOK, a/k/a
HAOYUN GUO, GENEVER HOLDINGS LLC, and
GENEVER HOLDINGS CORPORATION,

Defendants

-----X

Microsoft Teams
New York, New York
December 18, 2020

B E F O R E :

HONORABLE BARRY R. OSTRAGER

Justice

A P P E A R A N C E S :

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Kathy Y. Jones
Official Court Reporter

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1 THE COURT: Good morning.

2 All right. This is a hearing on damages.

3 So, Mr. Moss, I'll hear you.

4 MR. MOSS: Thank you, your Honor.

5 Good morning.

6 Your Honor, we're here on a very straightforward
7 issue as you note, what are PAX's damages resulting from
8 Mr. Kwok's breach of the personal guarantee.

9 We've submitted a calculation. Mr. Kwok has not
10 disputed that. The only argument he makes is that PAX
11 should have mitigated its damages.

12 This argument, as the Court suggested in a prior
13 hearing, has always always been duties and perhaps it's
14 100 percent wrong and because Mr. Kwok has sort of
15 contorted himself to try to explain why this Court should
16 apply a doctrine that is simply inapplicable as a matter
17 of Hong Kong law as a result is an argument that is
18 confused and confusing but it's not confusion for a jury
19 to decide because there are no disputed facts. It's a
20 purely legal issue.

21 I want to start with the key question and I'd
22 like to cut through this and see if I could set forth the
23 proper framework for the Court to analyze the issue.

24 The key question is which contract did PAX
25 supposedly have a duty to mitigate under. It's hard to

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1 know because Mr. Kwok keeps changing his position on that
2 question but he answered in the personal 2011 personal
3 guarantee. PAX sued Mr. Kwok because he owed a debt that
4 arose. The Court found that Mr. Kwok breached that
5 guarantee by not retaining any portion of the debt. That
6 is the contract. That is the breach.

7 The problem for Mr. Kwok, your Honor, is that
8 under well settled Hong Kong law the concept of
9 mitigation does not apply to claims for repayment of a
10 debt. Our expert on Hong Kong law says but you don't
11 have to take his word for it because their expert says
12 the same thing.

13 In paragraph seven of his new affidavit, docket
14 number 667, their expert says I agree with Mr. Melwani
15 which is our expert that the principal of mitigation does
16 not apply to a claim for repayment of a debt where that
17 claim is made under a loan agreement or a personal
18 guarantee.

19 That is based on uncontroverted Black Letter law
20 from Hong Kong's highest appellate court.

21 Your Honor, it's that simple. You can reject
22 this mitigation argument as a matter of undisputed,
23 undisputable Black Letter Hong Kong law with which both
24 parties agree. The rational would be airtight for doing
25 so.

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1 Now, because this Hong Kong law is fatal to
2 Mr. Kwok's argument, he's come up with a new argument
3 that this supposed duty to mitigate arose under the 2013
4 date of settlement. That argument is not only wrong.
5 It's precluded by the law of the case because your Honor
6 has already held otherwise.

7 As a refresher here, Judge, Mr. Kwok failed to
8 pay under the guarantee and Pacific Alliance wanted to
9 recover something. It agreed in this 2013 Deed of
10 Settlement to take three of Mr. Kwok's apartments in
11 Beijing free of charge to settle the debt. Mr. Kwok had
12 just satisfied 10 conditions precedent before the
13 settlement agreement could take effect and the parties
14 kept extending that deadline the Court will recall until
15 June 30, 2015.

16 The Court already ruled on summary judgment that
17 Mr. Kwok's failure to satisfy the conditions precedent
18 meant that the personal guarantee reverted. Quoting from
19 the summary judgment order, by the plain terms of the
20 2013 Deed of Settlement, the failure to satisfy the
21 conditions precedent to the settlement by June 30, 2015,
22 would result in reverting to the 2011 personal guarantee
23 being enforced full force and effect.

24 The Court further found that according to the
25 documentary evidence sponsored by both sides that the
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1 mitigation opportunity came up in July after June 30,
2 2015, and that by then "the 2013 Deed of Settlement had
3 already been nullified in its entirety and the 2011
4 personal guarantee was in full force and effect.

5 This was not a breach. It was a failure to meet
6 conditions precedent to effectuating the settlement.

7 Because it was not a breach, you can't have
8 mitigation. That issue has already been decided.

9 Not only was it decided, your Honor, but
10 Mr. Kwok needs to agree that the mitigation opportunity,
11 supposed opportunity, was under the personal guarantee,
12 not the Deed of Settlement. He's only changing his
13 argument now because of how fatal this Black Letter law
14 is.

15 Here is what he wrote on page 10 of docket
16 number 36 which is his damages opposition.

17 Pacific Alliance had a continuing duty of
18 mitigation of damages under a personal guarantee under
19 which it is now suing the expiration of the Deed of
20 Settlement expiration. They agreed that it expired, not
21 that it was breached.

22 The expiration of the Deed of Settlement is
23 irrelevant for purposes of mitigation.

24 Mr. Kwok is changing his tune now because of
25 this Black Letter law with which his own expert agrees

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1 because it dooms him but he was right the first time that
2 any duty arose under the personal guarantee as was the
3 Court. The debt arose under the guarantee. Mr. Kwok
4 breached the guarantee. So, if there was any possible
5 mitigation, the duty was under the guarantee and you
6 can't have such a duty under Hong Kong law because it's a
7 contract for the repayment of a debt.

8 Even, your Honor, if the Court were to reverse
9 itself and entertain the notion that there might be a
10 duty to mitigate under this 2013 Deed of Settlement,
11 there wasn't and you can conclude that as a matter of law
12 too.

13 First, that's also in the contract for the
14 repayment of a debt. It's just that the repayment
15 currency was real estate instead of cash.

16 Our expert explains that that doesn't make a
17 difference. That doesn't change the analysis. Their
18 expert says it does but he doesn't cite a single Hong
19 Kong case to support that.

20 Second, as the Court is aware, this is an
21 independent basis to reject any mitigation under the 2013
22 Deed of Settlement.

23 As the Court is aware, a mitigation opportunity
24 must be reasonable under Hong Kong law. The opportunity
25 here was unreasonable as a matter of law. It does not

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1 turn on any disputed facts.

2 They are going to cite a lot of documents and
3 they say they're going to introduce some evidence at
4 trial that's not even in the record but there is no
5 factual dispute even if you take their preferred
6 narrative. There is no dispute that this supposed duty
7 to mitigate happened in 2015. They have this bogus
8 February 2015 date which is based on contorting the
9 general counsel testimony.

10 The Court already found that it happened in July
11 of 2015 based on the documentary evidence sponsored by
12 both parties but that doesn't matter.

13 Let's just say it happened some time in 2015.
14 At that time, the debt was 70 something million dollars.
15 Even under their view of the law, the documents they
16 cite, PAX's documents, the apartment at the time in 2015
17 were worth 27 million dollars and PAX would have had to
18 pay 17 million dollars to buy them. So, at best we would
19 have had to risk 17 million dollars to potentially earn a
20 10 million dollar profit. Damages at the time were 70
21 something million dollars. That would have only
22 mitigated damages by 10 million dollars. We would have
23 had to take a risk that was almost double the amount we
24 could have knocked off the damages. That is unreasonable
25 and they don't cite any case otherwise.

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1 The only case they cite, that involved spending
2 \$300,000 to completely eradicate 22 million dollars of
3 debt. It's apples and oranges.

4 Your Honor, I haven't gotten into the weeds
5 today because I don't want to confuse the issue.

6 Now, I haven't gotten into some of these details
7 because I don't want to confuse the issues because they
8 are not relevant to the issue before the Court today but
9 you're going to hear them from Mr. Siegal.

10 You're going to hear some factual assertions and
11 I want to preview you what you're going to hear, your
12 Honor, and the preview is that they are backed. They're
13 backed.

14 I'm going to give the law firm the benefit of
15 the doubt because they're new to the case. I'm going to
16 assume that these distortions are not deliberate.
17 They're just based on not knowing the record but I want
18 to point out two briefly.

19 First, Mr. Kwok features in his briefing a
20 document in the internal PAX document discussing the fact
21 that the apartments were worth about the same amount of
22 the loan. They used that document to suggest that we
23 want the apartment somehow instead of cash. It's a 2011
24 document. We explained this in our reply but the other
25 side continued to cite it without explaining its

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1 relevance. It has no bearing on the supposed mitigation
2 opportunity in 2015.

3 If you get to reasonableness, you need to look
4 at the value of the apartments in 2015 when these
5 supposed opportunities came up. That's 27 million
6 dollars. You don't look at documents from 2011 four
7 years earlier talking about what the value of the
8 apartments might have been then. It's totally
9 irrelevant.

10 Finally, I need to address one thing because it
11 is just -- it's irresponsible and I need to highlight for
12 you, Judge, that you can't trust the spin that they put
13 on these facts at all. This is page 13 of their
14 surreply. They say the evidence at trial will show that
15 plaintiff purposely decided not to mitigate its damages
16 opting to pursue litigation against Mr. Kwok personally
17 for "the sheer satisfaction it would create."

18 They are suggesting that we had an opportunity
19 to mitigate and we said, no, we want to sue them instead
20 out of spite. That's the suggestion from their brief.
21 They called this Exhibit 9 to Mr. Siegal's affidavit.
22 That's actually a typo. It's actually Exhibit 8.

23 But an innocent email from 2012 before PAX and
24 Mr. Kwok entered into the Deed of Settlement in 2013, PAX
25 was debating internally whether to sue Mr. Kwok

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1 personally or to try to settle by taking the three
2 apartments because they were doing everything they could
3 to recover something. Despite talking about some
4 benefits of a lawsuit, they agreed to settle a year later
5 in 2013 and entered into that Deed of Settlement. To
6 suggests that this presettlement 2012 document means that
7 our client purposefully decided not to mitigate in 2015
8 is irresponsible. It's incredibly misleading and it's
9 the type of misrepresentation that infects all of their
10 papers.

11 I can go on with these types of examples, your
12 Honor, but the upshot is that there is no trial to be had
13 here. Mr. Kwok doesn't even have any evidence. He
14 testified -- let's remember this. He testified that he
15 didn't even enter into the Deed of Settlement. He didn't
16 even know what it was. So, he has no foundation to offer
17 any evidence about the apartments.

18 He doesn't have any experts. He doesn't have
19 any other witnesses. And in a trial it would be
20 nonsense. It would be a circus.

21 Your Honor, you have a clear legal path, a clear
22 path that involves no disputed facts that you could take
23 all of theirs as true and that would allow you to
24 correctly reject this last ditch argument. It would
25 allow you to finally after a decade of Pacific Alliance

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1 chasing Mr. Kwok allow them to get to a judgment.

2 The Court correctly decided summary judgment.
3 There is no need to reverse. No basis to reverse the law
4 of the case. The Court was correctly dubious of this
5 argument, this mitigation argument from the outset and
6 the Court should reject it once and for all as a matter
7 of law.

8 As for the number, your Honor, it's undisputed
9 there was 46 million dollars and change in principle set
10 forth in the Deed of Settlement. Similar interest at
11 15 percent per year. We put in our filing on
12 September 21st when we filed our brief our damages
13 motion. Damages were 114,196,443. The Court only needs
14 to go to Exhibit A of Mr. Lewis' affirmation docket
15 number 564. We set forth the calculation which again
16 Mr. Kwok has never challenged and recalculate how
17 interest run at \$19,079.38 per day. We've done the math
18 for you. I did last night. Somebody can check me before
19 judgment is entered. It's been 86 days since we filed
20 our motion on September 21st.

21 So, if judgment were entered today, that number
22 would be \$115,837,270.00 and then of course we would have
23 the issue of legal fees for another day as the Court has
24 suggested we take that up later on.

25 That's all I have for today, your Honor.
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1 Thank you.

2 Thank you for hearing me.

3 THE COURT: What was the \$115 million number
4 again?

5 MR. MOSS: \$115,837,270.00. That's based on
6 114,196,443 as of September 21st plus 86 days of interest
7 at \$19,079.38.

8 THE COURT: 115,887,270?

9 MR. MOSS: 115,837,270.

10 THE COURT: All right. Let me hear from your
11 adversary.

12 MR. MOSS: Thank you, your Honor.

13 MR. SIEGAL: Good morning, your Honor.

14 Your Honor, I'm John Siegal with the Baker
15 Hostetler law firm representing the defendant Mr. Kwok.

16 We appreciate, your Honor, the opportunity to
17 address these issues this morning and we appreciate the
18 briefing process that the Court has directed and
19 permitted to fully brief the issues at this point in the
20 hearing.

21 We are not here to argue the facts because this
22 is not a fact finding hearing. The purpose here is for
23 the Court to determine whether a trial on damages is
24 required to resolve factual issues.

25 So, your Honor, I don't think my role here this
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1 morning is to vigorously present to the Court evidence or
2 describe evidence that would be introduced at a damages
3 trial on things that are clearly factual issues. I'm not
4 going to argue the facts of valuation although there are
5 clearly triable issues about the value of these
6 apartments. And the extent to which they exceeded we
7 would submit at trial, substantially and profitably
8 exceeded the amount of money that was required to pay off
9 the government lien on the apartments and release them
10 but that's not the issue we are for today.

11 Nor is the issue for today arguing the parties'
12 views of the conflicting evidence as to when the
13 mitigation opportunity arose. That is a triable issue.

14 Certainly, I'm not here to contort, confuse,
15 mislead, misrepresent or do any of the things that
16 counsel stated. That's for the Court to determine, of
17 course.

18 What I'm here to do is to explain the
19 defendant's reasons why the law, the law, requires a
20 trial as to whether the mitigation opportunity was
21 available, whether it was reasonable and whether it was
22 required under the parties' relationship at the time
23 whenever that was that the jury determines that the
24 opportunity arose.

25 Now, there are disputed issues of fact back and
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1 forth on virtually all of that but let's start with where
2 there is actually clarity and no disagreement as a matter
3 of law. And that is here.

4 As a matter of Hong Kong law, this Court has
5 before it no authority, no authority whatsoever, on which
6 it could base a holding that if the Deed of Settlement
7 was the governing document at the time that the
8 mitigation opportunity arose, there was a mitigation
9 requirement under that arrangement.

10 There is a statement in the plaintiff's expert
11 affidavit and no authority cited.

12 The Deed of Settlement was an agreement not for
13 the repayment of debt but for the conveyance of
14 apartments that the plaintiff agreed would satisfy the
15 prior debt but at the time that the Deed of Settlement
16 was in effect from 2011 through the end of June 2015, the
17 commercial arrangement between the parties was that the
18 defendant needed to clear title to the apartments and
19 convey them to the plaintiff in complete satisfaction of
20 obligations under that agreement.

21 Paragraph 22 of the second affidavit of our Hong
22 Kong expert Mr. Georgiou sets forth the Hong Kong law for
23 why that deed of repayment is not akin to an agreement
24 for payment of a sum certain. It's not a note. It's not
25 at that point a guarantee of a sum certain. It is an

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1 agreement for the conveyance of property and it
2 admittedly and agreed upon very valuable set of
3 properties. So valuable that the plaintiff agreed to
4 extend that Deed of Settlement year after year because
5 they wanted the apartments. And the purpose of the
6 arrangement at that point was for the defendant to convey
7 the property to the plaintiffs. That's what they wanted.
8 That was the deal.

9 Now, what plaintiff says about that Deed of
10 Settlement is really not that there was no mitigation
11 requirement under it. What plaintiff says about it is,
12 first of all, that it had expired but that's a fact issue
13 whether mitigation arose before or after June 30th. And
14 plaintiff argues that the deed wasn't in effect because
15 conditions precedent had not been met and there the Hong
16 Kong experts differ.

17 How that law applies to the facts here, we
18 assert it is a triable issue, but neither of those
19 arguments rebut and plaintiff offers no authority
20 whatsoever that if the Deed of Settlement was the
21 operative document at the time the mitigation opportunity
22 arose, there was a mitigation requirement that the
23 argument that the Deed of Settlement wasn't in effect
24 when the mitigation opportunity arose is not proven.
25 That's a triable issue for reasons I will explain. And

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1 the argument that the deed wasn't in effect because the
2 ten conditions of paragraph section 3.2 of the Deed of
3 Settlement somehow were conditions precedent, and until
4 all of them, they were conditions to closing, to
5 transfer, not to the operative effect of the agreement.
6 So, that argument is not correct.

7 But what is uncompletely clear is that there is
8 no authority in this record holding that mitigation was
9 not required when the Deed of Settlement was in force and
10 effect.

11 Now, when the mitigation opportunity arose is a
12 triable issue. The one thing that's clear on the factual
13 record here is that the mitigation opportunity arose some
14 time between the February seizure of the three apartments
15 by the government and the July 24th email when
16 Mr. Skevington laid out to the plaintiff's staff the
17 precise terms that would be required to release the
18 government lien, clear title and be able to take title to
19 the properties.

20 When between the February seizure and that
21 July 24th email the opportunity arose is not determined.
22 That is an issue that needs to be presented to a jury
23 which will make that determination based on a
24 preponderance of the evidence and each side can argue why
25 under a preponderance standard it's more likely than not

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1 we would argue that that mitigation opportunity arose
2 some time in that February to July period, and it's more
3 likely than not that it arose prior to June 30th.
4 Plaintiff can assert the other but that's a triable issue
5 and that's for the jury to determine.

6 There is no conclusive evidence on it. There is
7 no evidence that if this issue were a summary judgment
8 issue and this issue was not the subject of the summary
9 judgment decision, the Court did not need to decide and
10 did not make a factual finding with citations to the
11 record as to when the mitigation opportunity arose
12 because that wasn't the issue on summary judgment.

13 The Court held on summary judgment that the
14 conditions of the -- the 10 conditions of 3.2 had not
15 been met by June 30th and therefore the Deed of
16 Settlement was gone after June 30th. Okay. That's where
17 we are but that does not resolve the issue of whether
18 mitigation arose prior to the Deed of Settlement no
19 longer being in force and effect. And as the Court noted
20 in its summary judgment decision, the issue of mitigation
21 goes to damages.

22 So, the factual finding, the factual issue of
23 when the mitigation opportunity arose is not law of the
24 case as Mr. Moss submits. It was not necessary for the
25 Court to make a finding on that issue on summary judgment

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1 because there was a breach. The Court's statement in the
2 summary judgment decision regarding the timing of
3 mitigation is not a factual finding. It's not linked to
4 record evidence or anything else in the record of the
5 summary judgment motion because in fact the record is
6 indeterminant on this issue and the Court did state in
7 its October 15th decision that Mr. Kwok could present
8 damages of proof at trial.

9 We're not arguing that that statement is law of
10 the case but we're respectfully submitting that that
11 statement that Mr. Kwok could present damages, proof of
12 damages at trial is the correct ruling here.

13 Now, on the issue of the reasonableness of the
14 mitigation, reasonableness being quintessentially a
15 factual issue, and there are numerous valuations in the
16 record. Most of them, perhaps all of them, commissioned
17 by the plaintiff at various times. There the record is
18 suffused with evidence that the plaintiff's own staff
19 people felt that the price required to release the lien
20 was a good price, that it would lead to an immediate
21 write-up and the like but we're not here to argue the
22 facts of reasonableness.

23 The issue before the Court is whether the
24 reasonableness of the mitigation opportunity is a factual
25 issue requiring a trial. And there the law both in New

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1 York and Hong Kong is controlling and conclusive.

2 We point the Court in our brief to the Malihan
3 case from the First Department. The Malihan case is
4 really, although in a New York context in a different
5 context, exactly what happened here.

6 Plaintiff had a contract, a Deed of Settlement
7 that entitled it to conveyance of the properties. It was
8 supposed to get title. It was supposed to own the
9 properties. The government imposed an impediment and the
10 seller says that the impediment of the government should
11 have been cleared by the buyer as a mitigation to protect
12 the value of the asset and to ensure the result for which
13 the buyer bargained under the Deed of Settlement.

14 Well, that's what happened in the Malahan case.
15 In the Malahan case, there was a tax lien on the property
16 and the First Department held that the buyer under its
17 duty of mitigation was required to pay off the tax lien
18 to clear the title. Now, I acknowledge that was \$12,000.
19 And claiming the title of these three highly valuable
20 properties in a world class development in Pangu Plaza in
21 Beijing was a couple more digits than \$12,000 but it
22 doesn't matter. Reasonableness and whether that higher
23 amount of money was a reasonable mitigation for a
24 plaintiff that has 40 billion dollars in assets under
25 management is a factual issue.

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1 The First Department held in Malahan that when
2 you're a buyer and you have a contract to buy a property
3 and there is a government lien on it, that if it's a
4 reasonable proposition, you should pay off the lien to
5 clear title and get the property and then you can go
6 after the seller for the amount that you had to spend on
7 mitigation just as plaintiff would do here, could do here
8 with Kwok. So, that's the New York law. It's very
9 clear.

10 Think about this in the context of a New York
11 real estate transaction. You have a huge private equity
12 fund here that's trying to bargain for to take control of
13 a valuable asset and there is an impediment imposed by an
14 extraneous government situation, whether it's a tax lien,
15 whether it's a complaint by Kwok's competitor about the
16 square footage advertised, whether it's in a New York
17 context some Martin Act claim that leads to some
18 impediment to transfer of the property, whatever it is,
19 if it's a reasonable mitigation, the buyer has to do it.
20 And whether it's reasonable is a factual issue.

21 Now, under Hong Kong law, it's the same and
22 Mr. Georgiou cites numerous cases in his affidavit
23 regarding the duty of mitigation under Hong Kong law. I
24 really can't pronounce the name but I'll try the GE
25 Qingfu versus L & A International. That's a situation

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1 where the Hong Kong Court held that a company was
2 required to make a substantial expenditure to purchase
3 its own shares in order to put the counter party, to
4 restore the counter party to the share percentage that it
5 was supposed to have. The company had to buy back its
6 own shares, spend a lot of money to do it to put the
7 counter party in the position that it was supposed to be
8 in.

9 In a more pedestrian non-corporate setting
10 Lagden versus O'Connor, the Hong Kong court held that
11 it's reasonable for someone to pay to rent a car to
12 replace their car where they had to pay a higher rate for
13 the car rental than the other party would have had to pay
14 because of their particular circumstance but it was
15 reasonable for them to spend the money and do it and that
16 it was a reasonable and appropriate mitigation.

17 So, that's where we're at here under the Deed of
18 Settlement.

19 And the valuation of those apartments and
20 whether it was reasonable is a fact issue that we will
21 attempt to prove at the hearing was reasonable for
22 Pacific Alliance, would have been profitable for Pacific
23 Alliance, would have put Pacific Alliance in exactly a
24 position that it wanted to be in under the Deed of
25 Settlement which was a contract for the conveyance of

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1 these apartments.

2 The other argument asserted by plaintiff to
3 attack the Deed of Settlement and they have to do that,
4 they have to attack the Deed of Settlement because there
5 is no law in the record holding that mitigation was not
6 required if the Deed of Settlement was in force and
7 effect. So, the ten obligations under section 3.2, this
8 is addressed by Mr. Georgiou in his affidavit, were very
9 clearly conditions that had to be met not for the Deed of
10 Settlement to go into effect but for the plaintiff to
11 close on the conveyance and for the requirement met
12 before there was a closing before Pacific had to pay the
13 money, but from 2011 to 2015 all of the evidence shows
14 that these parties understood, agreed and knew that their
15 arrangement was governed by the Deed of Settlement. And
16 to argue now that the Deed of Settlement never took
17 effect when they continually extended it for that four
18 year period is contrary to Hong Kong law according to
19 Mr. Georgiou and it doesn't make commercial sense.

20 You have a contract for the sale of a property.
21 The parties are bound by that contract until it's
22 breached. When and if there is an opportunity to
23 mitigate, the buyer has to do what's required to
24 mitigate, to save, to protect and preserve the asset to
25 ensure it's conveyance.

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1 THE COURT: I think I understand your argument,
2 Mr. Siegal. You've repeated it three or four times.

3 MR. SIEGAL: Let me just finish up here.

4 Here, the Hong Kong experts have a disagreement
5 but the Court has to look at the law and it's based on a
6 factual dispute in an agreement where the facts need to
7 be presented for the jury and the jury to decide.

8 So, I do appreciate the Court's patience in
9 listening. If you have any questions, I'd be glad to
10 answer them.

11 THE COURT: All right. Mr. Moss, do you have
12 anything else to say?

13 MR. MOSS: If I could just touch very briefly,
14 your Honor.

15 I just heard Mr. Siegal argue at length about
16 the duty to mitigate under the 2013 Deed of Settlement.
17 Let me just read to you again the brief that he wrote
18 just two months ago. Docket 603. Pacific Alliance had a
19 continuing duty of mitigation.

20 Your Honor, the brief Mr. Siegal submitted
21 before his most recent one said Pacific had a continuing
22 duty of mitigation of damages under the personal
23 guarantee on which it is now suing. The expiration of
24 the Deed of Settlement is irrelevant for purposes of
25 mitigation.

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1 We all agree that the Deed of Settlement
2 expired. Mr. Kwok agrees. Your Honor held that on
3 summary judgment. So, all of this stuff about the Deed
4 of Settlement is not relevant.

5 The duty if any was under the personal guarantee
6 and as a matter of law there's no duty under the personal
7 guarantee.

8 This argument about the Deed of Settlement
9 having some sort of mitigation duty is completely
10 confused. You need a breach for a mitigation duty and
11 here there was no breach.

12 THE COURT: You made that point. I understand.

13 MR. MOSS: Okay, your Honor.

14 Thank you. I'm happy to wrap up, your Honor.

15 THE COURT: Okay. So, let me ask you, we have an
16 issue with respect to a boat that I enjoined Mr. Kwok from
17 moving which he may or may not have moved in violation of
18 the Court's order.

19 Where are we with respect to that issue?

20 MR. MOSS: We've never heard back from the other
21 side.

22 I've spoken to Ms. Carvalho I think once or
23 twice and asked her response and have been told that
24 we're going to receive one and we have not received one.

25 MR. SIEGAL: Your Honor, John Siegal.

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1 We have responded and Ms. Carvalho can provide
2 to the Court the information that we've been able to
3 provide in response.

4 MS. CARVALHO: Yes, your Honor. Melissa Carvalho
5 for defendant Kwok.

6 On November 9th we provided the ownership
7 information to plaintiff's counsel pursuant to this
8 Court's order to do so. The owner of the yacht is an
9 entity that 100 percent owns the yacht. Mr. Moss is
10 aware of all of that information and it's been provided.
11 We have been told that Mr. Kwok does not have any
12 ownership interests in the yacht.

13 MR. MOSS: Your Honor, the information I'm talking
14 about is the information about where the boat is and when
15 it was moved. That is what violated your order if that
16 happened. That's what we want to know. I keep hearing
17 this suggestion about Mr. Kwok not owning the boat.

18 Mr. Mitchell represents Mr. Kwok in another case
19 and he signed a pleading where he referred to that yacht
20 as Mr. Kwok's boat. So, this is nonsense that this is
21 not Mr. Kwok's boat.

22 MR. MITCHELL: Your Honor, this assertion that the
23 pleading that he's talking about wasn't referring to
24 ownership. It was referring to the fact that Mr. Kwok was
25 on that boat while he was being stalked by a person who was
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1 driving around the boat determining weaknesses and
2 broadcasting saying this is where somebody could attack the
3 boat. This is where somebody could shoot a rifle at the
4 boat. There was no implication in any way as to ownership,
5 just merely the fact that Mr. Kwok was on the boat.

6 It was my pleading. It wasn't a document by
7 Mr. Kwok. It wasn't affirmed, anything like that and
8 this was a reference to occupation such as, with all due
9 respect, your Honor, this is your courtroom so to speak.
10 The New York state court owns it. His does not
11 necessarily define ownership. It's an absurd reliance by
12 Mr. Moss.

13 THE COURT: Where is the boat?

14 MR. MITCHELL: Quite frankly, your Honor, Mr. Moss
15 is the one who told us it was gone. He should be aware.
16 He cited some tracking device. There was some site that he
17 was able to find where it was. We can try and confirm but
18 Mr. Moss told us where it was.

19 We will be certainly happy to get you that
20 information.

21 THE COURT: It seems to me I ordered the boat not
22 be moved.

23 MR. MITCHELL: Well, frankly, your Honor, my
24 understanding is and it's second hand admittedly but it has
25 to go down south at least to a minimum to the warm weather.

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1 It would be destroyed up here in the north. And you have
2 the staff on the boat who don't live in the north who go
3 home. I believe it's from Florida is my understanding.

4 It has to move, quite frankly, your Honor, with
5 all due respect but it's not Mr. Kwok's boat to, you
6 know, sort of decide that frankly.

7 I would be glad to try and speak with Mr. Siegal
8 and see if we can get more information but I think
9 Mr. Moss is posturing here.

10 MR. MOSS: And I recall, your Honor, that
11 Mr. Siegal asked if the boat could be moved and the Court
12 said no, not until you make a motion. And then we found
13 out that the boat was moved. We asked for information
14 about where it is. They should know better than we.
15 Mr. Kwok certainly had something to do with the boat and
16 got no response to that.

17 THE COURT: All right. Well, if there is going to
18 be a motion for contempt made, you will make the motion for
19 contempt. I'll decide what's before me. And you will hear
20 from me shortly.

21 This is also supposed to be a status conference.

22 So, are there issues to be tried separate and
23 apart from the issues that were argued this morning?

24 MR. MOSS: Yes, your Honor. There is the veil
25 piercing claim?

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1 THE COURT: How do you want to deal with the veil
2 piercing claim?

3 One of the Genever entities is in bankruptcy and
4 the other is not?

5 MR. MOSS: Correct. So, what we've done, your
6 Honor, we put in a stipulation, all three parties, to
7 continue the trial by 90 days and we have also moved in the
8 bankruptcy to lift the stay. And what we're hoping is that
9 by the time Covid clears a little bit and we are able to
10 have an in-person trial, by that time there will be a lift
11 of the stay for the veil piercing trial to proceed.

12 THE COURT: So, you're in effect stipulating to a
13 stay of the alter ego trial?

14 MR. MOSS: Correct, your Honor, for 90 days.

15 The hope is that by March or April we will be
16 able to be in person in the courtroom because I think we
17 would all prefer to be in person especially if it's going
18 to be a jury trial. I think we have to do it that way.
19 We're hoping that at that point there won't be a stay in
20 effect.

21 THE COURT: There is not going to be any jury
22 trials in 90 days. So, we'll give you an adjourned date
23 for a trial on the alter ego issue some time in the fall.

24 MR. MOSS: Okay, your Honor.

25 THE COURT: All right. I think that's everything
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1 that needs to be done today. I'll decide what's before me
2 as promptly as I can and we'll have a status conference
3 perhaps in March of 2021. Okay. Thank you.

4 MR. MOSS: Thank you.

5 MR. MITCHELL: Thank you, your Honor.


6 THE COURT: Thank you.

7 MR. MOSS: Thank you.

8 THE COURT: You will order a copy of the
9 transcript.

10
11 C E R T I F I C A T E

12 Certified to be a true and accurate transcript of the
13 proceedings.

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15 

16 _____
Kathy Y. Jones
17 Official Court Reporter
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